THE RICHARD L. VEGA GROUP

Telecommunications Engineers/Consultants

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April 18, 1997

VIA FEDERAL EXPRESS

Mr. William F. Caton, Acting Secretary
Federal Communications Commission
1919 "M" Street, N.W., Room 222
Mail Stop 1170
Washington, D.C. 20554

RE: Comments in Response to Notice of Proposed Rulemaking
WT Docket #97-81, Released February 27, 1997

Dear Mr. Caton:

Please find enclosed, on behalf of its clients, in an original and four (4) copies, Comments filed in response to the Notice of Proposed Rulemaking, WT Docket #97-81, Released February 27, 1997. In short, these comments urge the Commission to retain lotteries as the method to rank the MAS Applications which were filed in 1992. These Comments are being submitted on or before the April 21, 1997 due date established by the Commission.

Should the Commission have any questions concerning these matters, please contact the undersigned.

Respectfully submitted,

Richard L. Vega, Jr.
President

RLVjr/clc
Enclosures
cc: Richard L. Vega
Dorothy Conway
Timothy Fain

Before the

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C.

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In the Matter of:

Amendment of the Commission's Rules Regarding Multiple Address Systems	)	WT Docket No. 97-81
To: Chief, Wireless Telecommunications Bureau	)	

COMMENTS

On behalf of its clients, Judith K. Vega and Leslie Thomas (hereinafter referred to as "The Applicants"), The Richard L. Vega Group ("Vega Group"), a Florida based telecommunications consulting engineer, hereby submits its Comments to the Federal Communications Commission ("FCC"), in response to the Notice of Proposed Rulemaking ("Notice"), WT Docket No. 97-81 released February 27, 1997, regarding the regulatory treatment of certain Multiple Address Systems ("MAS") applications. Specifically, these Comments respond to the Notice, which raises issues concerning the applicability of the use of competitive bidding to award MAS licenses for which applications were filed prior to July 26, 1993. The applicants' MAS applications are timely submitted and qualified to participate in the lottery process for the MAS markets, as identified in FCC Public Notice ("Filing Notice"), 20798, **revised filing Window for Point-to-Multipoint Channels in the 900 MHz Government/Non-Government Fixed Service,** General Docket #82-243, DA-91-1422. As such, the Applicants have established standing to participate in this Comment process. With this, the following is submitted:

FCC REQUIRED RANDOM SELECTION PROCESS

The initial applications for the MAS markets were filed prior to July 1993, and were subject to FCC §90.143(b) Rules regarding random selection of mutually exclusive applications. This rule stated that:

> "...if there are more applications than can be accommodated on available frequencies, the Commission may grant the applications pursuant to the system of random selection prescribed in Section 1.972 of this Chapter."

The Commission repeated its intent to rank the applications through random selection in the Filing Notice. The applications accepted by the Commission almost 5 years ago must be processed under these guidelines which specifically call for the random selection process to be used to select MAS licensees. In fact, the Commission previously concluded that the MAS applications fall "...outside the scope of Section 309(j)(A)," since the service was classified as "private." In the Second Report and Order, PP Docket #93-253, released April 20, 1994, Page 15, Paragraph 35, the Commission states that "...MAS will therefore be exempted from competitive-bidding." The Commission's most recent statement that the applications should be auctioned because the applicants' "seemingly" proposed to provide "subscriber-based" service is speculative and non-conclusive.

FCC INTERPRETATION OF SECTION 309(j) IS WRONG

The Commission's interpretation of Section 309(j) of the Communications Act is incorrect. Specifically, pursuant to Section 309(j) of the Communications Act, (competitive bidding), the Commission "...may not issue any license or permit by lottery ...UNLESS (emphasis added)...the application was accepted for filing before July 26, 1993." See Section 6002(c) (Special Rule), Omnibus Budget Reconciliation Act of 1993, 47 U.S.C. §§151-713. The MAS applications accepted

by the Commission were filed between January and February 1992, over one (1) year earlier than July 26, 1993. Hence, there is no basis for which the Competitive Bidding Rules allow the FCC to change the selection process for these applications. Here Congress clearly stated its intention that the Commission must complete the processing of all applications filed prior to July 1993 using the originally established method of random selection. The Commission does not possess the "discretion" to choose to award the licenses by any other method but the random selection process.

RANDOM SELECTION IS FASTER AND CHEAPER

The Commission's argument that the use of lotteries "would result in greater processing costs..." is false and cannot be substantiated. In fact, based on the enormous rise in Commission operating costs since the implementation of the auctions, the opposite is true. The utilization of the random selection process would be completed electronically, similar to the largely successful random selection ranking process used in the 220-222 MHz service, with existing personnel from the Commission. It is estimated that the amount collected from the fees submitted along with the MAS applications would be more than adequate to cover the cost to process these applications. The Commission notes that it accepted over 50,000 applications for the MAS service which equates to over Seven Million Seven Hundred Fifty Thousand Dollars ($7,750,000.00).

There is also no guarantee that the Commission can expedite service to the public through the use of any processing method, let alone competitive bidding. With respect to competitive bidding, the Commission is reminded that it took nearly one (1) year to accept applications for the C-Block Personal Communications Service Auction, roughly five (5) months to conduct the auction, and another four (4) months to release the Public Notice listing the conditional licensees. Yet, two and a half years after its first Public Notice announcing the auction, not all of the C-Block markets have been licensed.

Based on past lottery results, the Commission could easily complete the lottery and grant the licenses within 90 days. Under the auction process, the Commission would be forced to return all pending MAS applications and fees (3 months); establish a Bidder's Information Package (4 months); accept applications, up-front monies and conduct an auction (8 months); and finally grant each license (2 months). Thus, under current guidelines the public interest would absolutely be served since MAS service would be available much sooner than if the Commission were to auction the frequencies which is predicted to take nearly two (2) years.

CONCLUSION

It is simply ludicrous for the Commission to conclude that the applicants had "ample opportunity to carry out their business plans...by applying for other MAS channels," because "...spectrum was available that is substitutable in every respect." The Commission offers absolutely no supporting evidence in which it has based this statement.

Modification of the processing rules will harm those that have waited for an opportunity to bring forth MAS service to the public. The Applicants filed their applications in accordance with the processing standards and expects for the Commission to incorporate the processing standards dictated by Federal Law. The Commission, by its own Motion, confirmed that the MAS applications are not subject to inclusion in the competitive bidding process. Thus, the Commission must move swiftly with regard to the allocation of the permanent license for the MAS Markets using the random selection process.

By: 

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Date: April 18, 1997